COURT NO.2

HIGH COURT OF UTTARANCHAL AT NAINITAL.

First Appeal No. 04 of 2001

Rajeev Jaiswal ….. Appellant.

Versus

Smt. Suman Jaiswal ….. Respondent.

Coram: Hon. P.C. Verma, J.
Hon. B.S. Verma, J.

This appeal has been preferred under Section 28 of the Hindu Marriage Act **(*in short the Act)*** against the judgment and decree, dated 30-01-2001, passed by the Principal Judge, Family Court, Nainital, in Civil Suit No. 68 of 1999, Rajeev Jaiswal Vs. Smt. Suman Jaiswal, whereby the learned Judge has dismissed the petition of the petitioner-appellant for divorce for want of jurisdiction.

Brief facts, giving rise to the present appeal, are that the petitioner-appellant filed a petition under Section 13 of the Act for dissolution of the marriage between the parties by a decree of divorce alleging therein that the petitioner and respondent are Hindu by religion and their marriage was solemnized on 15-2-1988 according to Hindu rites and customs; that after the marriage, the respondent-wife used to reside with the petitioner at his house. It is also alleged that the petitioner has been working in the Medical Department and is posted at Lakhimpur Kheri; that on 26.2.97, when the petitioner was out of station and had gone to Lucknow, the respondent wife without any cause or consent of the petitioner left the company of the petitioner and want to the house of her brother by taking jewellery and luggage at Lucknow; that the petitioner lodged report at Police Station Lakhimpur; but the respondent wife has not returned to the house of appellant till 26.2.1997 and during this interval, no cohabitation or marital

relations had taken place between them. According to petitioner, the respondent has deserted the petitioner without sufficient cause for more than two years, despite all efforts made by the petitioner-appellant to reconcile the matter to restore the marital relations between the parties. It is further alleged that out of the wedlock, two children named Km. Neha aged 10 years and master Sumit aged 7 years were born and the respondent wife have kept them with her, therefore, the appellant is also deprived of the company of his own children thereby causing mental pain to him. The petitioner has also alleged cruelty on the part of the respondent wife.

It is evident from the record that the respondent wife has moved an application before the learned lower court challenging the jurisdiction of the court, but the same was dismissed on 14.11.2000 by the then learned Judge for want of prosecution by her. Thereafter, the respondent has not put in appearance in the case, thereafter, the case was ordered to proceed ex-parte against her.

In support of his case, the petitioner-appellant has examined himself as P.W. 1 before the court below. In his testimony, he has stated that the marriage between the parties took place on 15.2.1988 at Sitapur. He also stated that from 23.8.1988, he has been posted in Mahila Hospital Lakhimpur Kheri and before that, he was posted at Kathgodam. His wife also used to reside with him at Lakhimpur Kheri since December 1988 and after about 8-9 years of marriage, she started saying that the petitioner should live with her at her Mayaka and the petitioner has supported the allegations of the petition in his oral statement. The learned lower Court after hearing the learned counsel for the petitioner and after going through the material before it, considered the legal aspect of the case regarding jurisdiction of court at Nainital in view of the provisions of Section 19 of the Hindu Marriage Act keeping in view the on oath statement of the petitioner that the marriage

between the parties had taken place at Sitapur and the respondent has been living at Lakhimpur. The learned Judge while discussing this legal aspect in his judgment has reproduced the relevant extract of this Section in the judgment itself. Believing the on oath statement of the petitioner that the parties last resided together at Lakhimpur, it was held by the learned court below that in view of the provisions of Section 19 of the Act, the petition was not maintainable in the court at Nainital. Accordingly, the petition was dismissed for want of jurisdiction.

Aggrieved by the impugned judgment and decree, the petitioner-appellant has preferred this appeal contending therein that the court below has erred in holding that the marriage between the parties had taken place at Sitapur instead of Kathgodam, district Nainital and that finding of the court below is against the evidence on record.

We have heard Mr. Sarvesh Agarwal, learned counsel for the petitioner and have examined the entire material on record.

The only point for determination before us in this case is whether the finding of the court below regarding want of jurisdiction is not based on evidence on record or not.

At the outset, it may be mentioned that the present case proceeded ex-parte against the respondent-wife in the court below, therefore, the evidence of the petitioner-appellant alone has been recorded. We are not at all inclined to accept the contention raised on behalf of the appellant that the finding arrived at by the court below is not based on the evidence on record. From a bare perusal of the impugned judgment dated 30.1.2001, which has been annexed with the memo of appeal by the appellant himself, it is crystal clear that the statement on oath of the petitioner-appellant has been elaborately discussed by the learned court below. There is unambiguous testimony of the petitioner to the effect that the marriage between the parties had place in Sitapur. Moreover,

according to the petitioner, his wife-respondent has been residing in Lakhimpur Kheri. Since the court below has reproduced the relevant extract of the provision of Section 19 of the Act in its judgment, in our opinion, there is nothing on record so as to warrant any interference with the impugned judgment and decree and to lead us to take a different view on the legal point of jurisdiction. The court below has rightly held that the courts in district Nainital had no jurisdiction to try the petition in view of clear provision of Section 19 of the Act.

Accordingly, the appeal has no merit and deserves dismissal.

The appeal is dismissed and the impugned judgment and decree are upheld. No order as to costs.

11-08-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**
RCP